

Upon these principles, therefore, it is ordered, that the exceptions of Eli Marriott and others, are sustained, and that of Stockett and wife is rejected. And the auditor's report, and statements No. 1, 2, 3, and 4, are approved; and the statements No. 5, 6, and 7, are rejected. And it is further ordered, that the trustee, Nicholas Brewer, jun'r, forthwith proceed to make sale of the real estate of the late Basil Brown, as directed by the orders of the 6th of July, 1826, and of the 8th of March, 1827.

On the 20th of March, 1828, Rezin Hammond, the displaced trustee, filed his petition, in which he states, that being the executor of Matthias Hammond, who was administrator of Basil Brown, and trustee for the sale of the real estate of Basil Brown, he had paid to Eli Marriott the sum of \$138, in part satisfaction of his claim against the estate of the late Basil Brown, to the amount of which he claims to be considered as the equitable assignee of Eli Marriott; and prays that the present trustee may be ordered to pay the amount to him out of the share awarded to Marriott. This petition was submitted without argument.

BLAND, C., 24th March, 1828.—At no period, and in no part of all these proceedings does it appear, nor has it before been even intimated, that this petitioner had any such claim as that now set up by him; or any claim whatever against Eli Marriott. It does not very distinctly appear, whether the petitioner claims in his own right, or in his representative character of executor. But in either way, if the claim has any real existence whatever, it is a mere legal one; it has not a shadow of equity about it. It is for

418 *money lent and advanced to Marriott, for which the petitioner may sue at law. But this delinquent agent of the Court, after having been removed, now asks to have the sum he alleges he has paid Marriott, allowed as a payment made while he was trustee, without any authority, or even pretext of authority, from this Court. Most certainly it cannot be allowed to him as a payment made as trustee. The petitioner takes another ground, which is, that he may be considered as an equitable assignee. But if he who had paid money, as set forth in the petition, could be let in as an equitable assignee, then all the other creditors of Marriott must be allowed to come in upon the same terms. But that could never be permitted. Whereupon it is ordered, that the petition be dismissed with costs.

A sale having been made by the trustee, and ratified by the Court, the auditor reported a distribution of the proceeds among the claimants, which was ratified on the 22d September, 1828, and the trustee directed to apply the proceeds accordingly, and the case thus finally closed.